

UNITED STATES COURT OF APPEALS

AUG 26 2002

TENTH CIRCUIT

PATRICK FISHER
Clerk

FREDDIE M. JOHNSON,

Petitioner - Appellant,

v.

REGINALD HINES, Warden; STATE
OF OKLAHOMA,

Respondents - Appellees.

No. 02-6095

D.C. No. 01-CV-460-C

(W.D. Oklahoma)

ORDER AND JUDGMENT*

Before **KELLY, McKAY, and MURPHY**, Circuit Judges.

After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This is a pro se federal prisoner 28 U.S.C. § 2254 appeal. Mr. Johnson was convicted of first degree murder and sentenced to life imprisonment. In his

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

habeas appeal, Mr. Johnson alleges that his sentence is unconstitutional for six reasons, each of which the magistrate judge addressed in a well-reasoned Report and Recommendation. On appeal, the district court adopted the magistrate judge's report denying the petition for relief. We review the district court's factual findings for clear error and "legal conclusions de novo." Rogers v. Gibson, 173 F.3d 1278, 1282 (10th Cir. 1999).

Appellant seeks a certificate of appealability. In order for this court to grant a certificate of appealability, Petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To do so, Petitioner must demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quotations omitted).

We have carefully reviewed Petitioner's brief, the district court's disposition, the magistrate judge's Report and Recommendation, and the record on appeal. Nothing in the facts, the record on appeal, or Petitioner's brief raises an issue which meets our standards for the grant of a certificate of appealability. We conclude that we cannot say that reasonable jurists could debate whether "the petition should have been resolved in a different manner." Id.

Therefore, Petitioner's request for a certificate of appealability is **DENIED**

and the appeal is **DISMISSED**.

Entered for the Court

Monroe G. McKay
Circuit Judge